

REMARKS

Claim Objections

The Examiner stated that Claim 14 was missing in the complete listing of all claims and their status filed in the preliminary amendment on January 16, 2004.

“Verify and correct as required.”

As requested by the Examiner, Applicant has corrected the complete listing of all claims to include Claim 14, which was in the continuation as filed but was missing from the preliminary amendment filed on January 16, 2004.

Claims 3 and 21 have been amended to correct a space missing between the words “communication” and “signal”.

Double Patenting

Claims 1, 6-10, 15, 17, and 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5-9, and 13-15 of Chong (U.S. Patent No. 6,738,353, hereinafter “Chong”).

“Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the instant invention are fully anticipated by the claims of the US Patent 6,738,353.”

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) is filed herewith to overcome an actual or provisional rejection based on a nonstatutory double patenting ground and the conflicting patent is commonly owned with this application.

Claim Rejections - 35 USC §103

Claims 1, 3-6, 8-10, 14-15, 17-22, and 25 are rejected under 35 U.S.C. §103(a) as being unpatentable over Goodman (U.S. Patent No. 7,173,910 B2, hereinafter “Goodman”) in view of Jaworski (U.S. Appl. Pub. No. 2003/0163772 A1, hereinafter “Jaworski”).

With regard to claims 1, 14, and 25, Applicant respectfully traverses the rejections since the Applicant's claimed combination, as exemplified in claim 1, includes the limitation not taught or suggested in Goodman or Jaworski of:

"a Voice over Internet Packet (VoIP) monitoring device...adapted to monitor the first communication signal, and calculate a first Quality of Services (QoS) score based on traffic density between the MTS and the VBT;" [deletion for clarity]

The Examiner states in the Office Action of August 8, 2007 (hereinafter the "Office Action"):

"Regarding Claim 1 [14 and 25], Goodman ... the VoIP monitoring device adapted to monitor the first communication signal, and calculate a first Quality of Services (QoS) score based on traffic density between the MTS and the VBT (column 7, lines 12-22);" [insertion and deletion for clarity]

Applicant respectfully disagrees because the claimed limitation of a "monitoring device" is not taught or suggested in Goodman. The claimed monitoring device monitors a signal and calculates a score. Neither of these limitations is taught or suggested in the Goodwin control device, which is the Goodman "manager 44". All the functions of the Goodwin manager do not include monitoring a signal or calculating a QoS score. This is as taught in Goodman col. 7, lines 12-22, which describes the functions:

"Still referring to FIG. 2, also connected to the VOIP network 12 is a management server (or manager) 44. All test probes in the network 30 are configured and controlled by the manager 44. The manager configures the test probe properties and test call generation schedules, as well as establishes alarms or thresholds to ensure delivery of service in accordance with Service Level Agreements (SLAs). It polls the probes on a periodic basis to gather test results, consolidates the test results for the entire network and stores the consolidated information in a database for analysis, reporting and historical trending." [underlining for clarity]

Based on the above, it is respectfully submitted that claims 1, 14, 15, and 25 are allowable rejected under 35 U.S.C. §103(a) as being patentable over Goodman in view of Jaworski because:

"“[T]he prior art reference (or references when combined) must teach or suggest **all** the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.” [Bold for clarity] *In re Vaack*, 947 F2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)

With regard to claims 3, 15, and 21, Applicant respectfully traverses the rejections since the Applicant's claimed combination, as exemplified in claim 3, includes the limitation not taught or suggested in Goodman or Jaworski of:

“...the first received communication signal include TIT [Transmission Impairment Test] files.” [deletion and insertion for clarity]

The Examiner continues:

“Regarding claim 3 [15 and 21], Goodmand [sic] and Jaworski teach the claimed invention as applied to claim 1 above, and in addition Goodman further teaches the first communication signal and the first received communication signal include TIT files (column 3, lines 55-57).” [insertion and underlining for clarity]

Applicant respectfully disagrees because TIT files are files relating to Transmission Impairment Tests and Goodman does not teach or suggest that a first received communication signal includes such files in Goodman col. 3, lines 55-57, which states:

“A second test probe acts as a resource to receive the [test.WAV files 22a, 22b] file transmitted by the first test probe and perform the PAMS algorithm.” [insertion for clarity]

With regard to claims 4 and 22, Applicant respectfully traverses the rejections since the Applicant's claimed combination, as exemplified in claim 4, includes the limitations not taught or suggested in Goodman or Jaworski of:

the first TIT score is a score selected from the group consisting of Perceptual Speech Quality Measurement (PSQM) score and Perceptual Evaluation of Speech Quality (PESQ) score; and
the TIT files are files selected from the group consisting PSQM files and PESQ files.”

The Examiner continues:

“Regarding claim 4 [and 22], Goodmand [sic] and Jaworski teach the claimed invention as applied to claim 1 above, and in addition Goodman further teaches the first TIT (column 6, 53-60) score is a score selected from the group consisting of Perceptual Speech Quality Measurement (PSQM) score and Perceptual Evaluation of Speech Quality (PESQ) score; and the TIT files are files selected from the group consisting PSQM files and PESQ files (column 3, lines 32-51; page 2, in other publications section, mentioned PESQ).” [insertion and underlining for clarity]

Applicant respectfully disagrees because Goodman does not teach or mention a first TIT “score” in Goodman col. 6, lines 53-60, which states:

“The VOIP communications device test probes, such as test probe 38, can perform, in addition to the PAMS tests, the following signaling and voice quality tests: Q.931 setup time; RTP setup time; background noise; audio level; and insertion loss. The software can also simulate various packet-based impairments (e.g., jitter, total packet loss, packet loss burst, etc.) and assess their effects on the VOIP and the VOIP communications devices, e.g., the VOIP gateways 16. [underlining for clarity]

Applicant also respectfully disagrees because Goodman does not teach TIT files being selected from a group of files including PQMS files in Goodman col. 3, lines 32-51, which states:

“The test probes 14a, 14b also store a software algorithm...(PAMS) algorithm. Other...algorithms, e.g., Perceptual Speech Quality Measurement (PQMS), can also be used. ...the term “voice call listening quality” as used herein refers to the quality measured by any perceptual voice call test technique, such as PAMS...or PQMS. Preferably, for optimum test results, the voice file should include voice samples representative of many different types of voice activity.” [underlining and deletions for clarity]

It is respectfully submitted that the mention of PESQ in Goodman page 2 does not meet the teaching or suggestion requirement of 35 U.S.C. §103(a).

With regard to claims 5 and 19, Applicant respectfully traverses the rejections since the Applicant’s claimed combination, as exemplified in claim 5, includes the limitations not taught or suggested in Goodman or Jaworski of:

“the first QoS score is determined based on factors selected from a group consisting of packet losses, jitter, and delays in the transmission of the first communication signal from the modem tester to the VBT.”

The Examiner states:

“Regarding claim 5 [and 19], Goodmand [sic] and Jaworski teach the claimed invention as applied to claim 1 above, and in addition Goodman further teaches the first QoS score is determined based on factors selected from a group consisting of packet losses, jitter, and delays in the transmission of the first communication signal from the modem tester to the VBT (column 1, lines 19-27).” [insertion and underlining for clarity]

Applicant respectfully disagrees because Goodman does not teach that a QoS score is determined but instead Goodman merely states that much work has been done with regard to QoS. This is clear in Goodman col. 1, lines 19-27, which states:

“Unlike data traffic, voice traffic is extremely intolerant of delay and delay variation (or "jitter"), as well as packet loss. Much work has been done in the area of packet delivery to provide end-to-end Quality of Service (QoS). Service level agreements (SLAs) for VOIP, like those for conventional data IP networks, therefore tend to be based on conventional data network metrics, that is, guaranteed service levels are expressed solely in terms of packet level performance, e.g., packet loss, delay, jitter.” [underlining for clarity]

It is respectfully submitted that, the fact that much work has been done, does not meet the teaching or suggestion requirement of 35 U.S.C. §103(a).

With regard to claims 6, 17, and 18, Applicant respectfully traverses the rejections since the Applicant's claimed combination, as exemplified in claim 5, includes the limitations not taught or suggested in Goodman or Jaworski of:

“the first communication signal contains a special code detectable by the VoIP monitoring device, and the VoIP monitoring device begins to monitor signal transmissions from the modem tester to VBT via the MTS once the special code is detected.”

The Examiner states:

“Regarding claim 6 [17 and 18], Goodmand [sic] and Jaworski teach the claimed invention as applied to claim 1 above, and in addition Goodman further teaches the first communication signal contains a special code detectable by the VoIP monitoring device, and the VoIP monitoring device begins to monitor signal transmissions from the modem tester to VBT via the MTS once the special code is detected (column 2, lines26- 34; column 7, lines 12-22).” [insertion and underlining for clarity]

Applicant respectfully disagrees because no special code is mentioned in Goodman. Goodman col.2, lines 26-34, teaches only that test calls are sent to certain phone numbers:

“In another aspect...associate service levels with phone numbers; and ...cause the test voice call to be transferred...to such phone number at the associated service level and causing a voice call listening quality to be measured for the associated service level to produce a voice call listening quality metric value.” [deletions and underlining for clarity]

Applicant also respectfully disagrees because, in addition to no special code being mentioned in Goodman, Goodman teaches that a “manager” controls the “test probes”, as explained in Goodman col. 7, lines 12-22:

“Still referring to FIG. 2, ... All test probes in the network 30 are configured and controlled by the manager 44. The manager configures the test probe properties and test call generation schedules, as well as establishes alarms or thresholds to ensure delivery of service in accordance with Service Level Agreements (SLAs). It polls the probes on a periodic basis to gather test results, consolidates the test results for the entire network and stores the consolidated information in a database for analysis, reporting and historical trending.”

The claimed device is a monitoring device, which is responsive to a level of service to start monitoring the network and to send out various scores. It is not taught or suggested by the Goodman manager that constantly performs the control functions indicated in the quoted paragraph above and consolidates information without monitoring the network or sending out scores itself.

With regard to claims 8 and 19, Applicant respectfully traverses the rejection since the Applicant’s claimed combination includes the limitation not taught or suggested in Goodman or Jaworski of:

“the VoIP monitoring device is adapted to provide the first PSQM score, and the first QoS score to the MTS for storage.”

The Examiner states:

“Regarding claim 8 [and 19], Goodmand [sic] and Jaworski teach the claimed invention as applied to claim 1 above, and in addition Goodman further teaches the VoIP monitoring device (Fig. 2, manger 44) is adapted to provide the first PSQM score, and the first QoS score to the MTS for storage (column 2, lines 26-34; 'column 6, lines 3-7, column 7, lines 12-22).”
[insertion and underlining for clarity]

Applicant respectfully disagrees for the reason provided for claim 7 that Goodman FIG. 2 shows a manager rather than the claimed monitoring device. Further, Applicant respectfully disagrees because the Goodman manager does not provide scores to the MTS for storage but instead does not provide scores and stores consolidated information in itself. This lack of the claimed limitations is taught in Goodman col. 2, lines 26-34, and col. 7, lines 12-22, quoted above for claim 6. The Examiner’s citation of Goodman col. 6, lines 3-7, also

shows the lack of the claimed limitation and also that the Examiner is reading one claimed element, the monitoring device, on two Goodman elements, the manager 44 and the test probes 14, because Goodman col. 6, lines 3-9, states:

“Each of the test probes 14 is controlled to generate test calls to others of the test probes 14 over the VOIP network 12, perform PAMS testing on the voice files played back in response to the test calls, as well as play a reference voice file when acting as a recipient of a test call, much in the same manner as was described for the two test probes shown in FIG. 1.” [underlining for clarity]

With regard to claims 9 and 10, Applicant respectfully traverses the rejections since the Applicant’s claimed combination, as exemplified in claim 5, includes the limitation not taught or suggested in Goodman or Jaworski of:

“a Broadband Termination Interface (BTI) coupled to the MTS, the BTI adapted to convert broadband signals to signals selected from a group consisting of television, packetized data, video, voice, and a combination thereof.”

The Examiner states:

“Regarding claim 9 [and 10], ...

Jaworski further teaches further comprising: a Broadband Termination Interface (BTI) coupled to the MTS, the BTI adapted to convert broadband signals to signals selected from a group consisting of television, packetized data, video, voice, and a combination thereof (Fig. 1, [0003], lines 6-13).” [insertion, deletions, and underlining for clarity]

Applicant respectfully disagrees because Jaworski does not teach, suggest, or mention a Broadband Termination Interface in Jaworski FIG. 1 or Jaworski para. [0003], which states:

“[0003] FIG. 1 ...the Cable Modem Termination System (CMTS) 10... The CMTS 10 acts as an interface between the Internet backbone 12 and the Hybrid Fiber Coax (HFC) network 18. ... The CMTS 10 connects to the HFC network 18...with the television signals 16 to be carried on the HFC network to subscribers homes 22. In alternate embodiments of HFC Networks 18, coaxial only, or fiber only networks may be used.” [underlining and deletions for clarity]

Based on all of the above, it is respectfully submitted that claims 1, 3-6, 8-10, 14-15, 17-22, and 25 are allowable under 35 U.S.C. §103(a) as being patentable over Goodman in view of Jaworski because the references do not show the claimed limitations and because:

“As adapted to *ex parte* procedure, *Graham* [v. *John Deere Co.*] is interpreted as continuing to place the ‘burden of proof on the Patent Office which requires it to produce the factual basis for its rejection of an application under sections 102 and 103.’” [insertion and underlining for clarity] *In re* *Piasecki*, 745 F.2d 1468, 223 USPQ 785, 788 (Fed. Cir. 1984), quoting *In re* *Warner*, 379 F.2d 1011, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968).

Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over Goodman (U.S. Patent No. 7,173,910 B2, hereinafter “Goodman”) as modified by Jaworski (U.S. Appl. Pub. No. 2003/0163772 A1, hereinafter “Jaworski”) and applied to claim 1 above and in further view of Chiles et al. (U.S. Appl. Pub. No. 2001/0036192 A1, hereinafter “Chiles”).

Regarding claim 7, this dependent claim depends from independent claim 1 and is believed to be allowable since it contains all the limitations set forth in the independent claim from which it depends and claims unobvious combinations thereof.

Other

The Examiner stated that the prior art made of record and not relied upon is considered pertinent to Applicant’s disclosure.

“Hyodo et al. (US Patent #5715239) discloses ATM multiplex transmission system having test equipment.”

“Sanderson (US Patent #6292468 B1) discloses Method for qualifying a loop for DSL service.”

“Leung (Pub #US 2002/0087711 A1) discloses Calling service of a VoIP device in a VLAN environment.”

The other references cited by the Examiner showing the prior art have been considered and are not believed to disclose, teach, or suggest, either singularly or in combination, Applicant’s invention as claimed.

Conclusion

In view of the above, it is submitted that the claims are in condition for allowance and reconsideration of the rejections is respectfully requested. Allowance of claims 1, 3-10, 14-15, 17-22, and 25 at an early date is solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including any extension of time fees, to Deposit Account No. 50-0374 and please credit any excess fees to such deposit account.

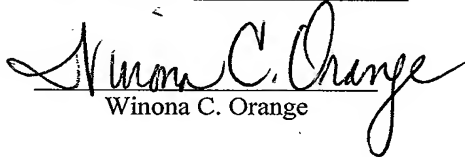
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